

REMARKS

Prior to entry of this amendment, claims 1 – 14 and 16 – 24 are currently pending in the subject application. Claims 1, 16 and 17 are independent. By the instant amendment, claim 1 has been amended to incorporate the subject matter of claim 4, which was indicated as containing allowable subject matter. Claim 4 has been cancelled. Claim 16 has been amended in similar fashion to claim 1. Claim 17 has been amended to incorporate the subject matter of claim 21. Claim 21 has been cancelled. Claim 11 has been cancelled. In addition, claims 2, 5– 8, 12, 13, 18 and 22 – 24 have been amended to provide for proper antecedent basis and claim dependencies.

Additionally, applicants note with appreciation the Examiner's forwarding the Interview Summary mailed on August 14, 2008, which detailed the telephone conversation with a representative of undersigned counsel.

A. Asserted Indefiniteness Rejections of Claims 4 – 12 and 21 – 24

In the outstanding Office action, claims 4 – 12 and 21 – 24 were rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicants regard as the invention. Specifically:

Claim 4 recites "a relative stress index" on line 7. Claim 4 depends from claim 1, which recites "a plurality of stress indexes" on line 7 of the claim. It is unclear whether the "relative stress index" in claim 4 is one of the "plurality of stress indexes" recited in claim 1, or is a different stress index.

Claim 5 recites "a relative stress index". Claim 5 depends from claim 1, which recites "a plurality of stress indexes" on line 7 of the claim. It is unclear whether the "relative stress index" in claim 5 is one of the "plurality of stress indexes" recited in claim 1, or is a different stress index.

Claim 6 recites "a stress index" on line 10 of the claim. Claim 6 depends from claim 1, which recites "a plurality of stress indexes" on line 7 of the claim. It is unclear whether the "stress index" in claim 6 is one of the "plurality of stress indexes" recited in claim 1, or is a different stress index.

Claim 7 recites "a relative stress index" on line 9. Claim 7 depends from claim 1, which recites "a plurality of stress indexes" on line 7 of the claim. It is unclear whether the "relative stress index" in claim 7 is one of the "plurality of stress indexes" recited in claim 1, or is a different stress index.

Claim 8 recites "a stress index" on line 10. Claim 8 depends from claim 1, which recites "a plurality of stress indexes" on line 7 of the claim. It is unclear whether the "stress index" in claim 8 is one of the "plurality of stress indexes" recited in claim 1, or is a different stress index.

Claim 11 recites "a relative first stress index" and "a relative second stress index". Claim 11 depends from claim 1, which recites "a plurality of stress indexes" on line 7 of the claim. It is unclear whether these relative stress indexes of claim 11 are two of the "plurality of stress indexes" recited in claim 1, or are different stress indexes.

Claim 12 recites "a relative third stress index". Claim 12 depends from claim 1, which recites "a plurality of stress indexes" on line 7 of the claim. It is unclear whether the "relative third stress index" in claim 12 is one of the "plurality of stress indexes" recited in claim 1, or is a different stress index.

Claim 21 recites "a relative first stress index" on line 7 of the claim. Claim 21 depends from claim 17 which recites "a plurality of stress indexes" on line 10 of the claim. It is unclear if the "relative first stress index" recited in claim 21 is one of the "plurality of stress indexes" recited in claim 17 or is a different stress index.

In response to the rejection, claims 1, 5 – 7, 12, and 22 – 23 have been amended to provide for further clarification. Claims 1, 5 – 7, 12, and 22 – 23 have been amended to recite "... relative stress index of the plurality of relative stress indexes." It is respectfully requested that the rejection be favorable reconsidered and withdrawn.

B. Asserted Anticipation Rejection of Claims 1 and 13

In the outstanding Office action, claims 1 and 13 were rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,267,568 to Takara ("the Takara reference"). By the instant amendment, claim 1 has been amended to include the allowable subject matter of claim 4. Accordingly, claim 1 is believed to be in condition for allowance, and a notice to such effect is respectfully requested.

Further, because claim 13 depends from claim 1, claim 13 is believed to be similarly allowable as depending from an allowable base claim. Accordingly, favorable reconsideration and withdrawal of the rejection of claims 1 and 13 is respectfully requested.

C. Asserted Obviousness Rejection of Claims 2, 3 and 16

In the outstanding Office action, claims 2, 3 and 16 were rejected under 35 U.S.C. § 103(a) as being unpatentable over the Takara reference in view of U.S. Patent No. 4,907,596 to Schmid et al. (“the Schmid et al. reference”).¹ Applicants respectfully submit that claims 2 and 3 are patentable by virtue of their dependency from claim 1 of section B above. Therefore, it is respectfully requested that the rejection of claims 2 and 3 under 35 U.S.C. § 103(a) be favorably reconsidered and withdrawn.

Applicants respectfully submit that the added limitations of claim 16 parallels the language of claim 4, indicated as including allowable subject matter by the Examiner in the Office action of August 6, 2008, at page 9. Accordingly, applicants respectfully submit that claim 16 is allowable over the cited prior art. Thus, claim 16 is allowable for at least the reasons that claim 1 is allowable. Therefore, applicants respectfully request favorable reconsideration and withdrawal of the rejection of claim 16.

D. Asserted Obviousness Rejection of Claims 14 and 17 – 19

In the outstanding Office action, claims 14 and 17 – 19 were rejected under 35 U.S.C. § 103(a) as being unpatentable over the Takara reference in view of the Schmid et al. reference and further in view of U.S. Patent No. 6,280,390 to Akselrod et al. (“the Akselrod et al. reference”). Applicants respectfully submit that claim 14 is patentable by virtue of its dependency from claim 1 of section B above. Therefore, it is respectfully requested that the rejection of claim 14 under 35 U.S.C. § 103(a) be favorably reconsidered and withdrawn.

¹ It is believed that the Examiner meant to reject claims 2, 3, and 16 on page 5 of the Office action mailed August 6, 2008 as indicated in the Interview Summary mailed August 14, 2008.

Independent claim 17 has been amended to include the allowable subject matter of claim 21. Accordingly, claim 17 is believed to be in condition for allowance, and a notice to such effect is respectfully requested.

Further, because claims 18 and 19 depend from claim 17, claims 18 and 19 are believed to be similarly allowable as depending from an allowable base claim. Accordingly, favorable reconsideration and withdrawal of the rejection of claims 17 – 19 is respectfully requested.

E. Asserted Obviousness Rejection of Claims 14, 17 and 19

In the outstanding Office action, claims 14, 17 and 19 were rejected under 35 U.S.C. § 103(a) as being unpatentable over the Takara reference and further in view of the Akselrod et al. reference. Applicants respectfully submit that claim 14 is patentable by virtue of its dependency from claim 1 of section B above. Therefore, it is respectfully requested that the rejection of claim 14 under 35 U.S.C. § 103(a) be favorably reconsidered and withdrawn.

Independent claim 17 has been amended to include the allowable subject matter of claim 21. Accordingly, claim 17 is believed to be in condition for allowance, and a notice to such effect is respectfully requested.

Further, because claim 19 depends from claim 17, claim 19 is believed to be similarly allowable as depending from an allowable base claim. Accordingly, favorable reconsideration and withdrawal of the rejection of claims 17 and 19 is respectfully requested.

F. Asserted Obviousness Rejection of Claim 20

In the outstanding Office action, claim 20 was rejected under 35 U.S.C. § 103(a) as being unpatentable over the the Takara reference in view of the Akselrod et al. reference and further in view of U.S. Patent No. 5,413,101 to Sugira (“the Sugira reference”). Applicants respectfully submit that claim 20 is patentable by virtue of its dependency from claim 17.

Therefore, it is respectfully rejected that the rejection of claim 20 under 35 U.S.C. § 103(a) be favorably reconsidered and withdrawn.

G. Allowable Subject Matter

Applicants note with appreciation the Examiner's indication of allowable subject matter in claims 4 – 12 and 21 – 24. Applicants respectfully submit, however, that all claims are in condition for allowance.

H. New Claims

Dependent claims 25 – 27 have been added by the instant amendment to recite limitations previously presented from claims 1, 16, and 17, respectively. Dependent claims 28 and 29 have been added, as supported at least by original claims 6 and 8 as filed, respectively. Accordingly, claims 25 – 27 are allowable for at least the reasons set forth above regarding claims 1, 16, and 17, respectively. Claims 28 and 29 are allowable for at least the reasons set forth above regarding claim 17. Entry and examination of these claims is respectfully requested.

I. Conclusion

The above remarks demonstrate the failings of the outstanding rejections, and are sufficient to overcome them. However, while these remarks may refer to particular claim elements, they are not intended to, nor need they, comprehensively address each and every reason for the patentability of the claimed subject matter over the applied art. Accordingly, applicants respectfully submit that the claims are allowable for reasons including, but not limited to, those set forth above, and patentability of the claims does not depend solely on the particular claim elements discussed above.

If the Examiner believes that additional discussions or information might advance the prosecution of the instant application, the Examiner is invited to contact the undersigned at the telephone number listed below to expedite resolution of any outstanding issues.

In view of the foregoing amendments and remarks, reconsideration of this application is earnestly solicited, and an early and favorable further action upon all the claims is hereby requested.

Respectfully submitted,

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Date: November 6, 2008



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